IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

OP.No. 5355 of 2003(K)

PETITIONER:

S.M. SOBHA, LOWER DIVISION TYPIST,
DR. PADIAR MEMORIAL HOMOEOPATHIC
MEDICAL COLLEGE, CHOTTANIKKARA-682 312,
ERNAKULAM DISTRICT.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
SECRETARY TO GOVERNMENT, HEALTH & FAMILY
WELFARE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. **THE PRINCIPAL & CONTROLLING OFFICER**
GOVERNMENT HOMOEOPATHIC MEDICAL COLLEGE,
IRANIMUTTAM, MANACAUD P.O.,
THIRUVANANTHAPURAM.

3. **DR. PADIAR MEMORIAL HOMOEOPATHIC**
MEDICAL COLLEGE, CHOTTANIKKARA-682 312,
REPRESENTED BY ITS PRINCIPAL.

BY ADV. SRI.R.LAKSHMI NARAYAN
SMT.R.RANJINI
BY GOVERNMENT PLEADER SRI.NOBLE MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13 /08 /2007 ,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP. NO.5355/2003

ORDER ON CMP. 9455/2003 IN OP. 5355/2003

DISMISSED

13.08.2007 **SD/- V.GIRI, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.S./27/81 DT. 7.7.81 ISSUED BY THE HONOURABLE SECRETARY, DR.PADIAR MEMORIAL HOMOEOPATHIC MEDICAL COLLEGE, CHOTTANIKKARA , TO THE PETITIONER.

EXT.P2:- COPY OF THE PROCEEDINGS NO.4015/D.P.M.H.M.C. DT. 10.12.82 OF THE 3RD RESPONDENT ISSUED TO THE PETITIONER.

EXT.P3:- COPY OF THE ORDER NO.DPM/300/97 DT.30.10.98 OF THE BOARD OF TRUSTEES OF DR.PADIAR MEMORIAL HOMOEOPATHIC MEDICAL COLLEGE, CHOTTANIKKARA ISSUED TO THE PETITIONER.

EXT.P4:- COPY OF THE PROCEEDINGS OF THE BOARD OF TRUSTEES, VIDE ORDER NO.DPM/315/99 DT. 1.12.99 ISSUED TO THE PETITIONER.

EXT.P5:- COPY OF THE ORDER, G.O.(MS) NO.100/2000/H&FWD DT. 25.4.2000 OF THE IST RESPONDENT ISSUED TO THE ACCOUNTANT GENERAL (AUDIT/A&E))TRIVANDRUM & OTHERS.

EXT.P6:- COPY OF THE ORDER G.O.(RT) NO.517/01/H&FWD DT. 20.2.01 OF THE 1ST RESPONDENT ISSUED TO -DO- -DO-

EXT.P7:- COPY OF THE ORDER G.O.(MS) NO.99/02 H&FWD DT. 25.4.02 OF THE IST RESPONDENT ISSUED TO THE 2ND & 3RD RESPONDENT AND OTHERS.

EXT.P8:- COPY OF THE STATEMENT SHOWING SENIORITY LIST OF QUALIFIED LD TYPIST ACCORDING TO THE STATE GOVERNMENT RULES AS ON 1.1.2000 IN 3RD RESPONDENT COLLEGE.

EXT.P9:- COPY OF THE STATEMENT SHOWING DETAILS OF NON. TEACHING STAFF OF DIFFERENT HOMOEOPATHIC MEDICAL COLLEGES.

EXT.P10:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT ON 17.5.02.

EXT.P11:- COPY OF THE ARGUMENT NOTE SUBMITTED ON BEHALF OF THE PETITIONER BEFORE THE 1ST RESPONDENT, DT. 1.12.02.

EXT.P12:- COPY OF THE ORDER, G.O.)RT), NO.3189/02/ H&FWD DT. 24.12.02 OF THE 1ST RESPONDENT ISSUED TO THE PETITIONER.

EXT.P13:- COPY OF THE ORDER BEARING NO.GO(MS) NO.235/97/H&FWD DT. 12.8.97.

/TRUE COPY/

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P.S. TO JUDGE

V.GIRI, J.

O.P.NO.5355 OF 2003 K

Dated this, the 13th August, 2007.

JUDGMENT

The petitioner, who entered service as a typist-cum-clerk in Padiyar Memorial Homeopathic Medical College, as evidenced by Exts.P1 and P2, was later promoted as an Upper Division Clerk as per order dated 30.10.1998, Ext.P3. She claims that as per Ext.P4 she was promoted as a Head Clerk with effect from 1.11.1999. The direct payment system was introduced in three colleges including Dr.Padiyar Memorial Homeopathic Medical College, Chottanikkara as per Ext.P5 dated 25.4.2000. The Controlling Officer of the college was required to pass orders of staff fixation and pending implementation of the same, they were directed to pay the salary and allowances, which they were drawing before December, 1999 prior to the issuance of Ext.P5 order.

2. The petitioner contends that in implementation of Ext.P5, specific orders were issued in relation to Dr. Padiyar Memorial Homeopathic Medical College, Chottanikkara granting sanction of payment of salary and allowances to the members of the staff at the rates that they were drawing in December, 1999 and it is thereafter, as per Ext.P7 Government Order, the staff pattern in respect of the college is stated to have been approved. The last paragraph of Ext.P7 is relevant and is therefore extracted:

> *"Government have examined the matter in detail and are pleased to approve the staff pattern consisting of 40 senior most and qualified teaching staff and 50 non-teaching staff of Dr.Padiar Memorial Homeopathic Medical College, Chottanikkara, as on 1.1.2000 as detained in Annexure I and II of this order. The Principal and Controlling Officer, Government Medical College, Thiruvananthapuram will fix the pay and allowances of the above staff due to their respective post with effect from 1.1.200."*

3. The petitioner, who, as stated above, claims that she was promoted as Head Clerk with effect from 1.11.1999 and that as per Annexure II to Ext.P7 she was fitted into the post of Lower Division Typist in the scale of pay of Rs.3,050-5230. She, inter alia, raises a grievance regarding the revision of her salary in the pre-revised scales and claims that she ought to have been paid salary in the scale of pay of Rs.4,600-7,125, instead of the fixation as reflected in Annexure II to Ext.P7, which fixed her salary in the scale of pay of Rs.3,050-5,230.

4. In these circumstances, the petitioner, after preferring a detailed representation Ext.P10 before the Government, approached this court with O.P.No.21042/02. By judgment dated 23.10.2002, Ext.P10 representation was directed to be disposed of after hearing the petitioner. The contention of the petitioner

reiterated in Ext.P11 noted an argument submitted to the Government.

5. The petitioner's claim was rejected as per Ext.P12 order. The petitioner's claim for promotion as Head Clerk and fixation of salary application to the post of Head Clerk was considered and rejected by the Government as per Ext.P12. The Government found that the petitioner and another person, who had raised a claim in relation to the post of Junior Superintendent had not passed the departmental test viz., Manual of Office Procedure and Account Test (Lower) as on 1.11.1999, the date mentioned in Ext.P7 order and that therefore, promotion of the petitioner as a Head Clerk was not in terms of Rule 28A of the Kerala State and Subordinate Services Rules .

6. With regard to the scale of pay claimed by the petitioner, it was found that the petitioner was drawing Rs.4,298/-, not in the scale of pay of Head Clerk; that the M.G.University Statute governs the service conditions, which insists a pass in the Manual of Office Procedure and Account Test (L). After having found so, the Government also considered and rejected the claim of the petitioner for time bound grade promotion, on the premise that she did not pass the Departmental test as on 1.1.2000. After having found so, it is stated in Ext.P12 that the question as to whether the petitioners

therein can be promoted to the next higher grade, on the premise that they have passed the Departmental Test subsequently and that consequently, the anomaly pointed out by the petitioners therein is a matter to be considered by the Principal and Controlling Officer, on merits. Subject to this rider, the claim made by the petitioner in this original petition for fixation of her salary in the post of Head Clerk as on 11.1.2000, the date mentioned in Ext.P7 order, as also the alternate prayer made by the petitioner for time bound higher grade promotion was also repelled. It is challenging Ext.P12, the petitioner has approached this court with this petition.

7. Counter affidavit has not been filed by anyone of the respondents. Obviously, 3rd respondent college may not be aggrieved by the relief sought for by the petitioner in the instant writ petition. It would have been appropriate for respondents 1 and 2 as such to file a counter affidavit.

8. After the filing of the writ petition, the petitioner also produced an additional document along with I.A.No.14512/06 producing therewith an order of the Government dated 12-8-1997 which is one dealing with the staff fixation of Athurashramam N.S.S.Medical College, Kottayam. In particular, the petitioner refers to para 3 of the said order wherein the Government sanctioned the existing posts of non-teaching and Para-medical staff of

Athurashramam N.S.S.Medical College, as detailed in Annexure II of the order. The position is clarified by the Government by mentioning that the existing non-teaching staff holding/officiating those posts in the college are allowed to continue as such. Annexure II mentioned in Ext.P13 order has not been produced along with Ext.P13. But reliance as such is placed on the statement contained in Ext.P13 to the effect that persons who were either holding/officiating in any one of the posts (non-teaching) as detailed in Annexure II has been allowed to continue as such. Petitioner claims that, if a similar treatment is afforded to the non-teaching staff of the Dr.Padiyar Memorial Homeopathic Medical College, the petitioner, who is alleged to have been occupying the post of a head clerk as on 1-11-1999, may be permitted to continue as such in the post and consequently should be permitted to draw salary relating to the post as such. The petitioner contends that, if the claim for promotion to the post of Head Clerk is not accepted or otherwise is not acceptable, consequently a time bound higher grade promotion should have been given as such. Whether the incumbent is, otherwise departmentally test qualified for promotion is not relevant for the purpose of sanctioning time bound grade promotion, which according to the petitioner, is depending on the completion of the requisite number of years for service and the eligibility of which, is

normally ascertained with reference to the number of persons who have not obtained promotion to the higher grade for variety of reasons as such.

9. After hearing the Senior Counsel Mr.K.P.Dandapani and after having perused the records, I am of the view that the Government ought to have reconsidered the issue agitated and directed to be considered by this Court in O.P.No.21047/02. The claim made by the petitioner, claiming to be a Head Clerk and Mr.Radhakrishna Shenoy, who claims to be a Junior Superintendent, who claimed to have been occupying the said respective posts, prior to the issuance of Ext.P6 order, is apparently on the basis of the staff fixation for the college in question. It contemplates continuance of six persons who were occupying any post as on 1-11-1999 as such. Ext.P6 order issued by the Government, dealing with disbursement of salary to the staff occupying various posts in the college in question, directed that sanction be accorded for payment of salary and allowances to the members of the staff existing as in December 1999 but with effect from 1-1-2000 as such. Exclusion was made with regard to the hospital staff on the premise that direct payment system was not introduced in the hospital as such.

10. A perusal of Ext.P12 order would show that the claim of the petitioner for continuance in the post of Head Clerk and for

sanction of the salary applicable to the said post was reiterated by the Government on the premise that the petitioner had not acquired the departmental test qualification applicable to the post of Head Clerk as on 1-11-1999. A perusal of Ext.P13 order issued in relation to the Athurashramam N.S.S.Medical College shows that the Government had sanctioned existing posts of non-teaching and para-medical staff in the said college as detailed in Annexure II to the order and the persons existing/officiating in the said post were allowed to continue as such. One of the questions which arose for consideration is whether the six persons who were occupying the said post when direct payment system was made applicable to the college in question should be permitted to occupy the post provided, they acquire the test qualification by the time the orders of sanction were issued by the Government. The petitioner, who seeks promotion to the post of Head Clerk, has not mentioned either in the writ petition or in the representation submitted before the Government, the precise date on which she has passed the departmental test in Manual of Office Procedure and Account Text (Lower). But the petitioner claims to be the senior most person now possessing the departmental test qualification and therefore entitled to the post of Head Clerk as such. The Government may, in the circumstances, consider whether the claim of the petitioner to

continue in the post of Head Clerk should not be accepted or not. This is so, because the direct payment system was made applicable to the college in question vide Ext.P5 order and Ext.P6 order was passed sanctioning staff pattern for the college. If there is no other person, who was departmentally test qualified, as on the date of sanction orders were issued, in relation to the college, there is no reason why the claim of the petitioner ought not to be considered as such. I make it clear that I am not expressing any final opinion in this regard because, it is a matter to be considered by the Government on a reconsideration of the claim made by the petitioner.

11. In so far as the claim for time bound grade promotion is concerned, the acceptability of the claim is again a matter to be considered in the event of the petitioner's claim for approval of promotion to the post of Head Clerk is rejected as such. If the petitioner's claim for promotion to the post of Head Clerk is accepted, then the question of time bound higher grade promotion may not arise. But the stand taken by the Government in ExtP.12 that the petitioner's claim for time bound promotion cannot be accepted because she was not test qualified does not seem to be correct. As stated above, the said claim also requires to be reconsidered, subject to the decision to be taken by the

Government with regard to the claim of the petitioner for promotion to the post of Head Clerk, in the light of the observation made above.

12. For all the reasons mentioned above, I set aside Ext.P12, insofar as it relates to the petitioner. The Government shall reconsider the claim of the petitioner for approval of her promotion to the post of Head Clerk with reference to the date of occurrence of the vacancy, in the light of the observations made herein above. The claim of the petitioner for time bound higher grade promotion, which necessarily, is alternate to the prayer for approval for promotion to the post of Head Clerk may also be reconsidered, subject to the decision to be taken by the Government on the first aspect. Fresh orders may be passed within three months from the date of receipt of a copy of this judgment and such decision may be taken after affording an opportunity of hearing to the petitioner and the representative of the 3rd respondent.

Subject to the above observations, the writ petition is disposed of.

Sd/-
(**V.GIRI)**
JUDGE

sk/-

//true copy//

V.GIRI, J.

O.P.No.5355 of 2003 K

JUDGMENT

13TH AUGUST, 2007.